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UNITED STATES DISTRICT COURT
FOR THE CENTRAL DISTRICT OF CALIFORNIA

DARREN "PETE" WHITE,

Plaintiff,

v.

CITY OF LOS ANGELES, ET AL.,

Defendants.

Case No.: 2:17-cv-3306-SJO-MRW

**MEMORANDUM OF CONTENTIONS
OF FACT AND LAW**

Date: August 21, 2018

Time: 9:00 a.m.

Dept.: 10C (Hon. S. James Otero)

Complaint filed: May 3, 2017

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1 **I. STATEMENT OF FACTS**

2 Plaintiff Darren “Pete” White is the founder and executive director of the
3 Los Angeles Community Action Network (LA CAN), an organization on Skid
4 Row dedicated to addressing homelessness. He was arrested on Skid Row on June
5 14, 2016 while attempting to video tape and monitor an arrest of a homeless
6 individual in a tent that occurred during a street cleaning. The incident occurred at
7 the intersection of Sixth and San Julian Streets.

8 Plaintiff arrived on the scene after receiving a call from someone already at
9 the location. There were other individuals present who were there to monitor the
10 City’s implementation of the stipulation in *Mitchell v. City of Los Angeles*.

11 Plaintiff traveled to the location to observe the police because the interaction
12 between the police and the homeless individual in the tent was similar to one that
13 occurred a year earlier. The prior incident ended with the police fatally shooting a
14 homeless man known as Brother Africa when he refused to come out of his tent.
15 Plaintiff was also concerned because the LAPD officer who killed Brother Africa
16 was involved in the June incident, even though Plaintiff had been told in meetings
17 with LAPD command staff that the officer was transferred out of Skid Row.

18 At Sixth Street and San Julian, City employees put up a yellow tape in an
19 “L” shape across the south side of the intersection, with an extension across the
20 southwest sidewalk blocking westward movement toward Wall. When Plaintiff
21 arrived, he had a video camera with him. He was on Sixth Street, behind the short
22 leg of the “L,” but in front of the tape across San Julian. There were other people
23 videotaping on the Sixth Street sidewalk, in front of both tapes. FAC Ex. 2.

24 Sometime after Plaintiff started videotaping, Defendant Sgt. Kinney ordered
25 him to get behind the tape. Plaintiff complied. He was behind the tape when he
26 was arrested.

27 A few minutes after Plaintiff was ordered to get behind the tape, Sgt. Kinney
28 looked at Plaintiff and again shouted at him to get behind the tape. Plaintiff

1 responded that he was behind the tape. Plaintiff had only his right arm, holding the
2 video camera, extended over the tape so that he could videotape the incident taking
3 place on the sidewalk. Nothing more was said between Sgt. Kinney and Plaintiff.
4 At the time, Sgt. Kinney was near the area where the officers were extracting the
5 homeless individual from his tent. Plaintiff was located about 80 feet away from
6 this action. At no time was Plaintiff closer than approximately 45-50 feet from the
7 incident.

8 Defendants contend that, when he was given the second order, although he
9 was behind the tape, Plaintiff's entire body was pushing the yellow police-line tape
10 out approximately 8 feet. Plaintiff disputes those allegations and counters that it
11 would have been impossible to do that because a police patrol car was parked in
12 front of the tape, taking up most of the width of narrow street. FAC Ex. 3. To
13 push the tape out as Defendant Kinney described in the police report, Plaintiff
14 would have to be on top of the police car and, even then, it is doubtful that there is
15 sufficient flexibility in the tape to extend it 8 feet without causing it to break.

16 Plaintiff continued to stay behind the tape on San Julian. At one point, Sgt.
17 Kinney walked to the north side of Sixth Street and warned other individuals that
18 had previously been in the street that they would be arrested if they crossed the line
19 again. He then walked over to the south side of Sixth Street and asked Plaintiff for
20 his identification, which Plaintiff handed to him. When Sgt. Kinney approached
21 Plaintiff and ordered him to give his identification, Plaintiff was behind the yellow
22 tape, attempting to videotape Defendant Kinney. Sgt. Kinney took Plaintiff's
23 identification with him and went back to the area of the tent incident. After a
24 while, Mr. White called out to Sgt. Kinney and asked that his identification be
25 returned to him.

26 A short time later, Sgt. Kinney again returned to the southeast corner of 6th
27 and San Julian and spoke to a group of men who were standing there. They were
28 on the public sidewalk and past the tape, yet Sergeant Kinney told them they

1 needed to get behind the tape. Mr. White videotaped Sgt. Kinney doing this, all
2 the time remaining behind the tape. Sgt. Kinney then walked a few feet back to
3 Mr. White and ordered him arrested. The entire interaction between Plaintiff and
4 Sgt. Kinney lasted approximately 10 to 15 minutes.

5 Defendants contend that one reason for the police tape is to protect the
6 public from the “chemicals” used to clean the sidewalks. This could not be the
7 basis for justifying Mr. White’s arrest since, when he was first ordered to get
8 behind the tape and complied, the City personnel who applied the “chemicals” had
9 not arrived. At the time of his arrest, he was approximately 40 feet from where the
10 closest point where the clean-up was occurring and approximately 80 feet from the
11 tent incident. There were numerous individuals much closer to the “chemicals,”
12 which Plaintiff believes is simply a mixture of chlorine and water. Exhibit 4 of the
13 FAC shows an individual sitting on the sidewalk, in a wheelchair, just inches from
14 the corner where the cleaning solutions are being used.

15 Plaintiff was arrested, handcuffed and “perp” walked to Central Station
16 where he was held in a cell, tightly handcuffed, while Defendants discussed what
17 violation of the law to charge him with. After some time, Plaintiff was transferred
18 to the Metropolitan Detention Center on Los Angeles Street, where he was again
19 put in a cell, still tightly handcuffed. After approximately 4 hours from the time
20 of his arrest, he was booked on a charge of violating California Penal Code §148,
21 “resisting arrest,” issued a Notice to Appear and released without posting bail. He
22 was not prosecuted on the charge. Plaintiff alleges that his arrest was unlawful
23 because he complied with the order to get behind the tape and did nothing that
24 could even marginally be considered to constitute “resisting arrest.”

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II. CLAIMS AND DEFENSES

(a) Summary Statement of Claims

1. Claim 1: Violation of First Amendment; CA Constitution Ar. 1, §2, 3: Defendant Kinney violated Plaintiff White's First Amendment rights when he ordered his arrest for videotaping him. Moreover, Defendant City of Los Angeles caused this arrest by failing to train officers on First Amendment rights.

2. Claim 2: Retaliation in Violation of the First Amendment; CA Constitution Ar. 1, §2: Defendant Kinney violated Plaintiff White's First Amendment rights when he ordered his arrest in retaliation for past statements by his organization and in retaliation for videotaping him. Moreover, Defendant City of Los Angeles caused this arrest by failing to train officers on First Amendment rights.

3. Claim 3: Unlawful Seizure in Violation of the Fourth Amendment; CA Const. Art. I, § 7: Defendant Kinney unlawfully seized Plaintiff White when he ordered his arrest without probable cause. Moreover, Defendant City of Los Angeles caused this arrest by failing to train officers on what resisting, delaying or obstructing an officer is and by encouraging officers to use this category as a catch-all violation.

4. Claim 4: Violation of the Fourteenth Amendment: Defendant Kinney unlawfully seized Plaintiff in violation of Cal. Gov't. Code §853.6. This violated his Fourteenth Amendment rights. Defendant City of Los Angeles caused this arrest by maintaining a policy that people may be arrested for minor misdemeanors.

5. Claim 5: Violation of Cal. Civ. Code §52.1: Defendant Kinney used threats, intimidation, and coercion to keep Plaintiff from exercising his First Amendment rights. Defendant City of Los Angeles is vicariously liable for Defendant Kinney's actions.

1 **6. Claim 6: False Imprisonment:** Defendant Kinney falsely imprisoned
 2 Plaintiff. Defendant City of Los Angeles is vicariously liable for
 3 Defendant Kinney's actions.

4 **7. Claim 7: False Arrest Without Warrant by Peace Officer:** Defendant
 5 Kinney falsely arrested Plaintiff without a warrant. Defendant City of
 6 Los Angeles is vicariously liable for Defendant Kinney's actions.

7 **(b) Elements of Claims**

8 **1. Claim 1:**

- 9 a. The Plaintiff engaged in protected conduct under the First
 10 Amendment
 11 b. The defendant took action against the plaintiff
 12 c. Stopping the Plaintiff's protected conduct was a substantial or
 13 motivating factor for the defendant's action.

14 **2. Claim 2:**

- 15 a. The Plaintiff and his organization engaged in protected conduct
 16 under the First Amendment
 17 b. The defendant took action against the Plaintiff
 18 c. Retaliating against the Plaintiff for Plaintiff's and his
 19 organization's protected conduct was a substantial or motivating
 20 factor for the defendants' action.

21 **3. Claim 3:**

- 22 a. Defendant Kinney seized the plaintiff's person;
 23 b. In seizing the Plaintiff's person, Defendant Kinney acted
 24 intentionally;
 25 c. The seizure was unreasonable.

26 **4. Claim 4:**

- 27 a. Defendant Kinney seized the Plaintiff's person;
 28 //

b. Defendant Kinney's seizure of Plaintiff's person was contrary to state law.

5. Claim 5:

a. Defendants used threats, intimidation, or coercion to interfere or in an attempt to interfere with the Plaintiff's exercise or enjoyment of rights secured by the laws of California;

b. The interference caused Plaintiff to suffer injury, damage, loss, or harm.

6. Claim 6:

a. The City of Los Angeles held the plaintiff in custody

b. Plaintiff should not have been held in custody at all, or there was an unnecessary delay in releasing the plaintiff

c. Plaintiff did not consent to the delay

d. Plaintiff was harmed.

7. Claim 7:

a. Defendant Kinney arrested Plaintiff White without a warrant

b. Plaintiff White was actually harmed

c. Defendant Kinney's conduct was a substantial factor in causing Plaintiff's harm.

(c) Evidence supporting these claims:

The evidence for these claims is the same for each claim, and consists of the testimony of the involved parties and of witnesses at the scene, the video of the incident, photographic stills from the video of the incident, the arrest and watch commander report, the citation issued to Mr. White, and the adult detention log.

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1 **III. ISSUES OF LAW**

2 **A. VIOLATION OF FIRST AMENDMENT RIGHTS AND** 3 **CALIFORNIA CONSTITUTION, ART. I, SEC. 2, 3**

4 Plaintiff has a lawful right to be present on a public street and videotape the
5 activity of the police. *Fordyce v. City of Seattle*, 55 F3d 436, 439 (9th Cir. 1995);
6 *Skoog v. City of Clackamas*, 469 F.3d 1121, 1231-32 (9th Cir. 2006); and, *Ford v.*
7 *City of Yakima*, 706 F.3d 1188, 1193 (9th Cir. 2013).

8 Even if there was probable cause, this was a retaliatory arrest based on the
9 fact that the arresting officer admittedly knew that Mr. White was affiliated with
10 LA CAN and the arresting officer knew that LA CAN was monitoring police
11 activity. The arresting officer stated that members of LA CAN had called him
12 names in the past, and chose to arrest Mr. White alone even though other people
13 whom he did not believe to be part of LA CAN had violated the posted tape in
14 much more egregious ways. The existence of probable cause is no defense. *Ford*,
15 706 F.3d at 1196. Moreover, Sergeant Kinney could have cited and released Mr.
16 White, but chose to arrest him. *Id.*

17 **B. PLAINTIFF DID NOT VIOLATE PC §148**

18 **1. The elements of a PC §148 violation**

19 The elements of a §148 violation, are: "(1) the defendant willfully resisted,
20 delayed, or obstructed a peace officer, (2) when the officer was engaged in the
21 performance of his or her duties, and (3) the defendant knew or reasonably should
22 have known that the other person was a peace officer engaged in the performance
23 of his or her duties." *Garcia v. Superior Court*, 177 Cal.App.4th 803, 818 (2009).

24 In 2015, the California Legislature amended Penal Code § 148 to add
25 subsection "(g)" to specifically provide that, standing alone, it is not, sufficient to
26 constitute obstruction of an officer or "reasonable suspicion to detain the person or
27 probable cause to arrest the person" for the act of photographing or taping a
28 "public officer, peace officer, or executive officer, while the officer is in a public

place or the person taking the photograph or making the recording is in a place he or she has the right to be[.]” SB 411, Assembly Committee on Public Safety, June 30, 2015. P.1. *See also* California Penal Code § 148(g). Amended by Stats. 2015, Ch. 177, Sec. 2. (Effective January 1, 2016.)

2. No facts evinced Plaintiff violated a “lawful” order

A violation of § 148(a)(1) requires that the criminal defendant “resist[ed], delay[ed], or obstruct[ed]’ a police officer in the *lawful* exercise of his duties.” *Smith v. City of Hemet*, 394 F.3d 689, 695 (9th Cir. 2005) (en banc) (alterations in original). “The longstanding rule in California . . . is that a defendant cannot be convicted of an offense against a peace officer ‘*engaged in . . . the performance of . . . [his or her] duties*’ unless the officer was acting lawfully at the time the offense against the officer was committed.” *In re Manuel G.*, 16 Cal. 4th 805, 815, (1997) (alteration in original) (internal citation omitted). Consequently, “148(a) does not make it a crime . . . to resist unlawful orders.” *Maxwell v. Cnty. of San Diego*, 708 F.3d 1075, 1086 (9th Cir. 2013).

“[A]n officer is not lawfully performing her duties when she detains an individual without reasonable suspicion or arrests an individual without probable cause.” *Garcia*, 177 Cal. App. 4th at 819 (emphasis omitted). Because Mr. White complied with the order to get behind the tape, there was no lawful order here that justified Mr. White’s arrest.

It is not sufficient that Sgt. Kinney continued to watch Plaintiff, even if the Sergeant’s attention was diverted by the presence of Mr. White. Distracting an officer does not, by itself, support a violation of the law for “obstructing” a law enforcement officer in the “lawful” performance of his duties. *Reed v. Lieurance*, 863 F.3d 1196 (9th Cir. 2017). As in *Reed*, a reasonable conclusion here is that the Defendant Sgt. Kinney lacked probable cause to believe that Mr. White was obstructing police activity. *Id.* at 1206; *see also In re Amanda A.*, 242 Cal. App.

1 4th 537, 549 (2015) (refusal to comply with order not a crime where “appellant's
2 refusal did not actually obstruct West's performance of her duties”).

3 At all times, Mr. White was between 40 and 80 feet away from where the
4 police were engaged in the interaction with the homeless man in the tent. At the
5 time of his arrest, Mr. White was approximately 40 feet away from the closest
6 corner where the street cleaning was occurring.

7 **3. The failure to comply with an order with “alacrity” does not**
8 **support a violation of PC §148**

9 The failure to comply with a police order with alacrity does not establish
10 probable cause for a charge of resisting arrest. *People v. Quiroga*, 16 Cal. App.
11 4th 961, 966 (1993). “California law . . . gives citizens considerable latitude in
12 confronting the police.” *Mackinney v. Neilsen*, 69 F.3d at 1007 (9th Cir. 1991)
13 (citing *People v. Wetzel*, 11 Cal. 3d 104, 107- 09, (1974)).

14 The indisputable evidence in this instance shows that Plaintiff was fully
15 behind the yellow police tape, videotaping Defendant Kinney, when he was
16 arrested. Plaintiff’s earlier position outside of the tape does not support an arrest
17 for failure to comply with a “lawful” order. *Smith v. Hemet*, 394 F.3d 689, 695-96
18 (9th Cir. 2005) (“the time of the arrest” does not include earlier law enforcement
19 contacts that might have been a lawful order; only the time at which the arrest is
20 made”).

21 **4. The Use of Profanity will not Support an Arrest**

22 “The First Amendment protects a significant amount of verbal criticism and
23 challenge directed at police officers.” *City of Houston v. Hill*, 482 U.S. 451, 461
24 (1987). “[T]he freedom of individuals verbally to oppose or challenge police
25 action without thereby risking arrest is one of the principal characteristics by which
26 we distinguish a free nation from a police state.” *Id.* at 462-63. Even angry and
27 profane speech directed at police officers is protected unless such speech is “shown
28 likely to produce a clear and present danger of a serious substantive evil that rises

1 far above public inconvenience, annoyance or unrest.” *Id.* at 461-63, citations in
 2 *Hill* omitted. *See also Duran v. City of Douglas, Ariz.*, 904 F.2d 1372, 1378 (9th
 3 Cir. 1990). No facts in this instance support such a “serious substantive evil.”

4 **C. PLAINTIFF WAS UNLAWFULLY ARRESTED AND SEIZED IN**
 5 **VIOLATION OF THE FOURTH AMENDMENT AND**
 6 **CALIFORNIA CONSTITUTION ART. I, SEC. 7**

7 As discussed above, probable cause did not exist to arrest Plaintiff under PC
 8 §148. *See supra* Section B. Thus, Plaintiff’s arrest and seizure were unlawful.

9 **D. DEFENDANTS VIOLATED THE BANE ACT BY INTERFERING**
 10 **WITH PLAINTIFF’S RIGHT TO FREELY EXERCISE HIS**
 11 **CONSTITUTIONAL AND STATUTORY RIGHTS**

12 California Civil Code §52.1, also known as the Bane Act, prohibits persons
 13 acting under color of law from interfering by means of threats, intimidation or
 14 coercion with the lawful exercise of federal or state constitutional and statutory
 15 rights. Plaintiff is not required to show that the Defendant acted out of a
 16 discriminatory animus or intent. "The essence of a Bane Act claim is that the
 17 defendant, by the specified improper means (i.e., 'threats, intimidation or
 18 coercion'), tried to or did prevent the plaintiff from doing something he or she had
 19 the right to do under the law or to force the plaintiff to do something that he or she
 20 was not required to do under the law." *Simmons*, 7 Cal.App.5th 1113, 1125 (2016)
 21 (internal citation omitted).

22 In this instance, Defendants interfered with Plaintiff’s First Amendment
 23 right to record the activity of police in a public place and his Fourth Amendment
 24 right to be free from unlawful seizure, as guaranteed under the United States and
 25 California constitutions. Plaintiff need not show that the Defendants used violence
 26 or a threat of violence against him to establish either “threats,” “intimidation,” or
 27 “coercion” under California Civil Code §52.1. *Gant v. City of Los Angeles*, 772
 28 F.3d 608 (9th Cir. 2014).

1 “By its plain terms, Section 52.1 proscribes any ‘interference with’ or
 2 attempted ‘interference with’ protected rights carried out ‘by threat, intimidation or
 3 coercion.’ Nothing in the text of the statute requires that the offending ‘threat,
 4 intimidation or coercion’ be ‘independent’ from the constitutional violation
 5 alleged. Indeed, if the words of the statute are given their plain meaning, the
 6 required ‘threat, intimidation or coercion’ can never be ‘independent’ from the
 7 underlying violation or attempted violation of rights, because this element of fear-
 8 inducing conduct is simply the means of accomplishing the offending deed (the
 9 ‘interference’ or ‘attempted interference’).” *Cornell v. City and County of San*
 10 *Francisco*, __Cal.App.4th__, 2017 Cal.App. LEXIS 1011, *53 (Cal. Ct. App.
 11 2017).

12 The Plaintiff’s burden to show a violation of Civil Code 52.1 is slight. “It
 13 should not prove difficult to frame many, if not most, asserted violations of any
 14 state or federal statutory constitutional right, including mere technical statutory
 15 violations, as incorporating a threatening, coercive, or intimidating verbal or
 16 written component.” *Venegas v. County of Los Angeles*, 32 Cal. 4th 820, 850–851
 17 (2004). It does not require a showing of discriminatory intent or animus by the
 18 Defendant. *Id.*

19 Where, as here, the Plaintiff claims an unreasonable seizure, no coercion
 20 need be shown independent from the coercion inherent in any seizure. *See Reese*
 21 *v. County of Sacramento*, 888 F.3d 1030, 1043 (9th Cir. 2018). This is so because
 22 “the plain language of Section 52.1 gives no indication that the ‘threat,
 23 intimidation, or coercion’ must be independent from the constitutional violation.”
 24 *Id.* at 1043. *See also B.B. v. Cty. of L.A.*, No. B264946, 2018 Cal. App. LEXIS
 25 618, at *28 (July 10, 2018). The coercion element of 52.1 is met by even low-level
 26 force, including tight handcuffing. *Lawrence v. City & County of San Francisco*,
 27 14-cv-00821 MEI (N.D. Cal. 2017).

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1 **E. PLAINTIFF WAS FALSELY ARRESTED AND IMPRISONED**

2 Plaintiff also alleges that he was falsely arrested and falsely imprisoned.
 3 These claims are established by the same wrongful acts that support Plaintiff's
 4 claim that he was unlawfully seized. *See Blankenhorn v. City of Orange*, 485 F.3d
 5 463, 486–488 (9th Cir. 2007); *Robinson v. Solano Cnty.*, 278 F.3d 1007, 1016–
 6 17(9th Cir. 2002) (en banc) (constitutional violations support state tort claims for
 7 false arrest and imprisonment, assault and battery, and there is no immunity for
 8 such claims). There is no state law immunity for such claims either. *Id.*

9 Under “established common law tort principles” false arrest and false
 10 imprisonment, wrongful “may be established by demonstrating a violation of a
 11 constitutional provision.” *Katzberg v. Regents of the Univ. of Calif.*, 29 Cal. 4th
 12 300, 303, n.1 (2002). Under California law, Defendants bear “[t]he burden ... to
 13 prove justification for the arrest.” *Cervantez v. J.C. Penney Co.*, 24 Cal. 3d 579,
 14 592 (1979); CACI No. 1402.

15 There is no immunity from liability for falsely arresting or imprisoning a
 16 person under California law. *Venegas v. County of Los Angeles*, 153 Cal. App. 4th
 17 1230, 1241–42 (2007). This principle applies to Plaintiff's Bane Act claim, as
 18 well. *Id.* at 1236, 1240–44. It is explicit in California Government Code §820.4,
 19 which provides: “A public employee is not liable for his act or omission,
 20 exercising due care, in the execution or enforcement of any law. *Nothing in this*
 21 *section exonerates a public employee from liability for false arrest or false*
 22 *imprisonment.*” (Emphasis added).

23 Under the facts of this case, there is ample evidence to establish Plaintiff's
 24 false arrest and false imprisonment claims. From the outset, there was no
 25 reasonable basis to believe that Plaintiff committed a crime.

26 **F. PLAINTIFF IS ENTITLED TO COMPENSATORY DAMAGES**

27 “For the breach of an obligation not arising from contract, the measure of
 28 damages, except where otherwise expressly provided by this code, is the amount

1 which will compensate for all the detriment proximately caused thereby, whether it
 2 could have been anticipated or not.” Cal. Civ. Code § 3333. “Tort damages are
 3 awarded to compensate a plaintiff for all of the damages suffered as a legal result
 4 of the defendant’s wrongful conduct.” *North American Chemical Co. v. Superior*
 5 *Court*, 59 Cal. App. 4th 764, 786 (1997).

6 Compensatory damages may include such injuries as “... personal
 7 humiliation, mental anguish, and suffering.” *Memphis Community School Dist. v.*
 8 *Stachura*, 477 U.S. 299 (1986) (quoting *Gertz v. Robert Welch, Inc.*, 418 U.S. 323,
 9 350, (1974)). When a plaintiff indisputably suffers an actual injury, a
 10 compensatory damages award is mandatory. *Hazle v. Crofoot*, 727 F.3d 983, 991-
 11 92 (9th Cir.2013).

12 **G. PLAINTIFF IS ENTITLED TO PUNITIVE DAMAGES AGAINST**
 13 **SGT. KINNEY**

14 Punitive damages are permitted against an individual defendant in a § 1983
 15 case. *Dang v. Cross*, 422 F.3d 800, 807 (9th Cir. 2005) (citing *Smith v. Wade*, 461
 16 U.S. 30, 49 (1983)). Punitive damages are available where the plaintiff proves by
 17 a preponderance of evidence that “the defendant’s conduct that harmed the plaintiff
 18 was malicious, oppressive or in reckless disregard of the plaintiff’s rights.” *Id.*

19 Conduct is malicious if it is accompanied by ill will, or spite, or if it is for
 20 the purpose of injuring the plaintiff. Conduct is in reckless disregard of the
 21 plaintiff’s rights if, under the circumstances, it reflects complete indifference to the
 22 plaintiff’s safety or rights, or if the defendant acts in the face of a perceived risk
 23 that its actions will violate the plaintiff’s rights under federal law. An act or
 24 omission is oppressive if the defendant injures or damages or otherwise violates
 25 the rights of the plaintiff with unnecessary harshness or severity, such as by the
 26 misuse or abuse of authority or power or by the taking advantage of some
 27 weakness or disability or misfortune of the plaintiff. *Id.* See also, Ninth Circuit
 28 Model Civil Jury Instr. 5.5.

1 “When a jury is instructed that it may award punitive damages for
 2 oppressive acts, the jury must consider the relative positions of power and
 3 authority between the parties and determine whether the defendant misused his
 4 power or authority ... in the course of the wrongful conduct.” *Dang*, 422 F.3d at
 5 809.

6 **VI. BIFURCATION OF ISSUES**

7 The parties have agreed to bifurcate the trial in two phases: (1) liability and
 8 damages; and (2) punitive damages.

9 **VII. JURY TRIAL**

10 Plaintiff is entitled to a jury trial on the following claims for which he seeks
 11 compensatory damages: (1) First Amendment, freedom of speech; (2) First
 12 Amendment, retaliation; (3) Fourth Amendment, unlawful seizure; (4) Fourteenth
 13 Amendment, liberty deprivation; (5) Bane Act violation; (6) False Imprisonment;
 14 and (7) False Arrest.

15 Pursuant to Fed. R. Civ. Proc. 38, Plaintiff made a timely demand for a jury
 16 trial by including his demand in the initial complaint. Compl. at p. 1; Dkt. #3.

17 **VIII. ATTORNEY’S FEES**

18 If Plaintiff prevails, he is entitled to reasonable attorney’s fees pursuant to 42
 19 U.S.C. § 1988. Plaintiff’s Bane Act claim, Cal. Civ. Code § 52.1, also provides for
 20 reasonable attorney’s fees. Similarly, California’s Private Attorney General
 21 statute, Cal. Code Civ. Proc. § 1021.5, allows for recovery for attorney’s fees.

22 **IX. ABANDONMENT OF ISSUES**

23 Plaintiff has not abandoned any claims that were raised in the initial
 24 complaint. There have been no dispositive motions dismissing any of Plaintiff’s
 25 claims.

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27 //

28 //

X. ABANDONED PARTIES

Plaintiff abandons Chief Charlie Beck as a Defendant in his official capacity. The remaining Defendants include the City of Los Angeles and Sergeant Edward Kinney.

Dated: July 23, 2018

Respectfully submitted,

LAW OFFICE OF CAROL A. SOBEL
SCHONBRUN, SEPLOW, HARRIS & HOFFMAN LLP

By: /s/ Carol A. Sobel
Carol A. Sobel
Attorney for Plaintiff